

**THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

DENTONS US LLP

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In re:

BED BATH & BEYOND, *et al.*,

Debtors.

Chapter 11
Case No. 23-13359

(VFP)

**LIMITED OBJECTION TO DEBTORS'¹ NOTICE TO CONTRACT PARTIES TO
POTENTIALLY ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES
AND RESERVATION OF RIGHTS**

Mishorim 255, LLC and Mishorim Gold Houston, LLC (collectively, the “Landlords”) hereby submit this limited objection (the “Objection”) to the Debtors’ *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* (Doc. 714) (“Cure Notice”). Landlords also assert and reserve their rights under 11 U.S.C. § 365 as to shopping center leases, specifically including, § 365(b)(3). In support Landlords state the following:

1. Prior to the Petition Date, Debtors leased retail space from Landlords pursuant to an unexpired lease (the “Lease”) as to certain nonresidential real property located at the Willowbrook Plaza shopping center in Houston, Texas.² The Lease is a single master lease for 92,475 square feet

¹ The last four digits of Debtor Bed Bath & Beyond Inc.’s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ claims agent at <http://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083.

² The Lease documents are voluminous and, thus, they are not affixed as an Exhibit to this objection. However, they will be provided upon request to undersigned counsel below.

(18,230 of those sq. ft. are Cost Plus World Market, 29,258 sq. ft. are operated under the “Buy Buy Baby” brand, and the remaining 44,987 sq. ft. are Bed Bath & Beyond).

2. The Lease is a lease “of real property in a shopping center” for purposes of 11 U.S.C. § 365(b)(3).

3. On June 13, 2023, the Debtors filed their Cure Notice. The Lease is included on Page 27 of 46 of the Cure Notice in three parts (#1264, #1265, and #1266). No cure amount is detailed as to the Lease in Debtors’ Cure Notice.

4. Landlords object to the Debtors’ Cure Notice because it is inaccurate according to Landlords’ books and records. The correct cure amount (the “Correct Cure Amount”) as to the Lease is \$314,310.17, which relates to unpaid CAM reconciliations from 2022. Therefore, in order to assume and assign the Lease, the full Correct Cure Amount must be satisfied. *See* 11 U.S.C. § 365(b).

5. Moreover, absent consent of the Landlords, if the Lease is assumed, it must be assumed in full as to all of its terms. And, any order that is entered establishing cure amounts with respect to the Lease must require that the Debtors (i) comply with all obligations under the Lease pursuant to 11 U.S.C. § 365(d)(3) pending the actual assumption and assignment of the Lease, and (ii) cure any additional defaults that may occur under the Lease between the date of this Objection and the effective date of any assumption and assignment by the Debtors. *See* 11 U.S.C. § 365(b)(1).

6. To the extent not inconsistent with the arguments raised herein, Landlords join in the objections of other landlords filed in these cases.

7. Landlords hereby reserve their rights to make such other and further objections as may be appropriate to the Leases, including, but not limited to, objections regarding adequate assurance of future performance under 11 U.S.C. § 365, specifically including as to the shopping center provisions of § 365(b).

THEREFORE, for the reasons set forth above, Landlords object to Debtors’ Cure Notice and as to the assumption and assignment of the Lease to the extent such assumption and assignment does not apply with 11 U.S.C. § 365 and applicable law.

DENTONS US LLP

Dated: July 5, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2023, I electronically filed the forgoing with the CM/ECF electronic filing system which will provide notice to all parties who have requested notice in this case pursuant to Bankruptcy Rule 2002. In addition, I have emailed a copy of the forgoing to the individuals detailed on the attached Service List.

DENTONS US, LLP

/s/ Lauren Macksoud

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